AMENDMENTS TO DEPARTMENT OF					
CORRECTIONS' OPERATIONS					
2009 GENERAL SESSION					
STATE OF UTAH					
Chief Sponsor: Paul Ray					
Senate Sponsor: Jon J. Greiner					
LONG TITLE					
General Description:					
This bill modifies provisions regarding the Department of Corrections, the Criminal					
Code, and the Code of Criminal Procedure regarding diagnostic evaluations of					
defendants.					
Highlighted Provisions:					
This bill:					
 repeals provisions allowing courts to commit a defendant to the custody of the 					
Department of Corrections for a 90-day diagnostic evaluation prior to sentencing;					
and					
 removes provisions in the code referring to providing diagnostic evaluations as part 					
of the presentence information prepared for the sentencing court.					
Monies Appropriated in this Bill:					
None					
Other Special Clauses:					
None					
Utah Code Sections Affected:					
AMENDS:					
62A-15-501, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,					
Chapter 8					



28	64-13-20, as last amended by Laws of Utah 2008, Chapter 382							
29	77-18-1, as last amended by Laws of Utah 2008, Chapters 3 and 382							
30	REPEALS:							
31	76-3-404 , as last amended by Laws of Utah 1991, Chapter 206							
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33	Be it enacted by the Legislature of the state of Utah:							
34	Section 1. Section 62A-15-501 is amended to read:							
35	62A-15-501. DUI Legislative policy Rehabilitation treatment and evaluation							
36	Use of victim impact panels.							
37	The Legislature finds that drivers impaired by alcohol or drugs constitute a major							
38	problem in this state and that the problem demands a comprehensive detection, intervention,							
39	education, and treatment program including emergency services, outpatient treatment,							
40	detoxification, residential care, inpatient care, [diagnostic evaluation,] medical and							
41	psychological care, social service care, vocational rehabilitation, and career counseling through							
42	public and private agencies. It is the policy of this state to provide those programs at the							
43	expense of persons convicted of driving while under the influence of intoxicating liquor or							
44	drugs. It is also the policy of this state to utilize victim impact panels to assist persons							
45	convicted of driving under the influence of intoxicating liquor or drugs to gain a full							
46	understanding of the severity of their offense.							
47	Section 2. Section 64-13-20 is amended to read:							
48	64-13-20. Investigative services Presentence investigation reports.							
49	(1) The department shall:							
50	(a) provide investigative [and diagnostic] services and prepare reports to:							
51	(i) assist the courts in sentencing;							
52	(ii) assist the Board of Pardons and Parole in its decision-making responsibilities							
53	regarding offenders;							
54	(iii) assist the department in managing offenders; and							
55	(iv) assure the professional and accountable management of the department;							
56	(b) establish standards for providing investigative [and diagnostic] services based on							
57	available resources, giving priority to felony cases; and							
58	(c) employ staff for the purpose of conducting:							

59	(1) thorough presentence investigations of the social, physical, and mental conditions
60	and backgrounds of offenders; and
61	(ii) examinations when required by the court or the Board of Pardons and Parole[; and]
62	[(iii) thorough diagnostic evaluations of offenders as the court finds necessary to
63	supplement the presentence investigation report under Section 76-3-404.]
64	(2) The department may provide recommendations concerning appropriate measures to
65	be taken regarding offenders.
66	(3) (a) The presentence [diagnostic evaluation and] investigation reports prepared by
67	the department are protected as defined in Section 63G-2-305 and after sentencing may not be
68	released except by express court order or by rules made by the Department of Corrections.
69	(b) The reports are intended only for use by:
70	(i) the court in the sentencing process;
71	(ii) the Board of Pardons and Parole in its decisionmaking responsibilities; and
72	(iii) the department in the supervision, confinement, and treatment of the offender.
73	(4) Presentence [diagnostic evaluation and] investigation reports shall be made
74	available upon request to other correctional programs within the state if the offender who is the
75	subject of the report has been committed or is being evaluated for commitment to the facility
76	for treatment as a condition of probation or parole.
77	(5) (a) The presentence investigation reports shall include a victim impact statement in
78	all felony cases and in misdemeanor cases if the defendant caused bodily harm or death to the
79	victim.
80	(b) Victim impact statements shall:
81	(i) identify the victim of the offense;
82	(ii) itemize any economic loss suffered by the victim as a result of the offense;
83	(iii) identify any physical, mental, or emotional injuries suffered by the victim as a
84	result of the offense, and the seriousness and permanence;
85	(iv) describe any change in the victim's personal welfare or familial relationships as a
86	result of the offense;
87	(v) identify any request for mental health services initiated by the victim or the victim's
88	family as a result of the offense; and
89	(vi) contain any other information related to the impact of the offense upon the victim

or the victim's family that the court requires.

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- (6) If the victim is deceased; under a mental, physical, or legal disability; or otherwise unable to provide the information required under this section, the information may be obtained from the personal representative, guardian, or family members, as necessary.
- (7) The department shall employ staff necessary to pursue investigations of complaints from the public, staff, or offenders regarding the management of corrections programs.
 - Section 3. Section 77-18-1 is amended to read:
- 77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic monitoring.
- (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.
- (2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime or offense, the court may, after imposing sentence, suspend the execution of the sentence and place the defendant on probation. The court may place the defendant:
- (i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;
 - (ii) on probation with an agency of local government or with a private organization; or
 - (iii) on bench probation under the jurisdiction of the sentencing court.
- (b) (i) The legal custody of all probationers under the supervision of the department is with the department.
- (ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.
 - (iii) The court has continuing jurisdiction over all probationers.
- (3) (a) The department shall establish supervision and presentence investigation standards for all individuals referred to the department. These standards shall be based on:
 - (i) the type of offense;
- (ii) the demand for services;
- (iii) the availability of agency resources;

(iv) the public safety; and

- (v) other criteria established by the department to determine what level of services shall be provided.
 - (b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and the Board of Pardons and Parole on an annual basis for review and comment prior to adoption by the department.
 - (c) The Judicial Council and the department shall establish procedures to implement the supervision and investigation standards.
 - (d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.
 - (e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.
 - (4) Notwithstanding other provisions of law, the department is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in accordance with department standards.
 - (5) (a) Prior to the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant.
 - (b) The presentence investigation report shall include a victim impact statement according to guidelines set in Section 77-38a-203 describing the effect of the crime on the victim and the victim's family.
 - (c) The presentence investigation report shall include a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act.
 - (d) The presentence investigation report shall include:
 - (i) findings from any screening and any assessment of the offender conducted under

152 Section 77-18-1.1; and

(ii) recommendations for treatment of the offender.

(e) The contents of the presentence investigation report[, including any diagnostic evaluation report ordered by the court under Section 76-3-404,] are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

- (6) (a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional ten working days to resolve the alleged inaccuracies of the report with the department. If after ten working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.
- (b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.
- (7) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.
- (8) While on probation, and as a condition of probation, the court may require that the defendant:
 - (a) perform any or all of the following:
- (i) pay, in one or several sums, any fine imposed at the time of being placed on probation;
 - (ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;
 - (iii) provide for the support of others for whose support the defendant is legally liable;
- (iv) participate in available treatment programs, including any treatment program in which the defendant is currently participating, if the program is acceptable to the court;
- (v) serve a period of time, not to exceed one year, in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds

183	most appropriate;					
184	(vi) serve a term of home confinement, which may include the use of electronic					
185	monitoring;					
186	(vii) participate in compensatory service restitution programs, including the					
187	compensatory service program provided in Section 76-6-107.1;					
188	(viii) pay for the costs of investigation, probation, and treatment services;					
189	(ix) make restitution or reparation to the victim or victims with interest in accordance					
190	with Title 77, Chapter 38a, Crime Victims Restitution Act; and					
191	(x) comply with other terms and conditions the court considers appropriate; and					
192	(b) if convicted on or after May 5, 1997:					
193	(i) complete high school classwork and obtain a high school graduation diploma, a					
194	GED certificate, or a vocational certificate at the defendant's own expense if the defendant has					
195	not received the diploma, GED certificate, or vocational certificate prior to being placed on					
196	probation; or					
197	(ii) provide documentation of the inability to obtain one of the items listed in					
198	Subsection (8)(b)(i) because of:					
199	(A) a diagnosed learning disability; or					
200	(B) other justified cause.					
201	(9) The department shall collect and disburse the account receivable as defined by					
202	Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:					
203	(a) the parole period and any extension of that period in accordance with Subsection					
204	77-27-6(4); and					
205	(b) the probation period in cases for which the court orders supervised probation and					
206	any extension of that period by the department in accordance with Subsection (10).					
207	(10) (a) (i) Probation may be terminated at any time at the discretion of the court or					
208	upon completion without violation of 36 months probation in felony or class A misdemeanor					
209	cases, or 12 months in cases of class B or C misdemeanors or infractions.					
210	(ii) (A) If, upon expiration or termination of the probation period under Subsection					
211	(10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section					
212	76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench					
213	probation for the limited purpose of enforcing the payment of the account receivable.					

(B) In accordance with Section 77-18-6, the court shall record in the registry of civil judgments any unpaid balance not already recorded and immediately transfer responsibility to collect the account to the Office of State Debt Collection.

- (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its own motion, the court may require the defendant to show cause why the defendant's failure to pay should not be treated as contempt of court.
- (b) (i) The department shall notify the sentencing court, the Office of State Debt Collection, and the prosecuting attorney in writing in advance in all cases when termination of supervised probation will occur by law.
- (ii) The notification shall include a probation progress report and complete report of details on outstanding accounts receivable.
- (11) (a) (i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.
- (ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.
- (b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.
- (12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.
- (ii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.
- (b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.
 - (ii) If the court determines there is probable cause, it shall cause to be served on the

defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show cause why the defendant's probation should not be revoked, modified, or extended.

- (c) (i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.
 - (ii) The defendant shall show good cause for a continuance.

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- (iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed [for him] if the defendant is indigent.
 - (iv) The order shall also inform the defendant of a right to present evidence.
 - (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.
- (ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.
- (iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.
- (iv) The defendant may call witnesses, appear and speak in the defendant's own behalf, and present evidence.
 - (e) (i) After the hearing the court shall make findings of fact.
- (ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation term commence anew.
- (iii) If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.
- (13) The court may order the defendant to commit himself to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or the superintendent's designee has certified to the court that:
 - (a) the defendant is appropriate for and can benefit from treatment at the state hospital;
 - (b) treatment space at the hospital is available for the defendant; and
- (c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).
- 275 (14) Presentence investigation reports[, including presentence diagnostic evaluations,]

are classified protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the department may disclose the presentence investigation only when:

- (a) ordered by the court pursuant to Subsection 63G-2-202(7);
- (b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;
 - (c) requested by the Board of Pardons and Parole;

- (d) requested by the subject of the presentence investigation report or the subject's authorized representative; or
- (e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.
- (15) (a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.
- (b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (16).
- (16) (a) If the court places the defendant on probation under this section, it may order the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.
- (b) The electronic monitoring shall alert the department and the appropriate law enforcement unit of the defendant's whereabouts.
 - (c) The electronic monitoring device shall be used under conditions which require:
 - (i) the defendant to wear an electronic monitoring device at all times; and
- (ii) that a device be placed in the home of the defendant, so that the defendant's compliance with the court's order may be monitored.
 - (d) If a court orders a defendant to participate in home confinement through electronic

307	monitoring as a condition of probation under this section, it shall:
308	(i) place the defendant on probation under the supervision of the Department of
309	Corrections;
310	(ii) order the department to place an electronic monitoring device on the defendant and
311	install electronic monitoring equipment in the residence of the defendant; and
312	(iii) order the defendant to pay the costs associated with home confinement to the
313	department or the program provider.
314	(e) The department shall pay the costs of home confinement through electronic
315	monitoring only for those persons who have been determined to be indigent by the court.
316	(f) The department may provide the electronic monitoring described in this section
317	either directly or by contract with a private provider.
318	Section 4. Repealer.
319	This bill repeals:
320	Section 76-3-404, Presentence investigation and diagnostic evaluation
321	Commitment of defendant Sentencing procedure.

Legislative Review Note as of 3-3-09 3:36 PM

Office of Legislative Research and General Counsel

H.B. 373 - Amendments to Department of Corrections' Operations

Fiscal Note

2009 General Session State of Utah

State Impact

Enactment of this bill will reduce ongoing General Fund appropriations of \$427,400 and ongoing Crime Victims Reparations Trust Fund appropriations of \$750,000 beginning FY 2010.

	2009	2010	2011	2009		2011
	Approp.	Approp.	Approp.	Revenue	Kevenue	Revenue
General Fund	\$0	(\$427,400)	(\$427,400)	\$0	40	
Restricted Funds	\$0	(\$750,000)	(\$750,000)		\$0	\$0
Total	\$0	(\$1,177,400)	(\$1,177,400)	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

3/6/2009, 9:36:34 AM, Lead Analyst: Ricks, G.

Office of the Legislative Fiscal Analyst